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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/998,084	11/30/2001	Adrian D. de Silva	BEARM-092A	4364

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STETINA BRUNDA GARRED & BRUCKER
75 ENTERPRISE, SUITE 250
ALISO VIEJO, CA 92656

EXAMINER

BRANDT, ADAM CURTIS

ART UNIT	PAPER NUMBER
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3771

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/22/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 09/998,084	Applicant(s) DE SILVA ET AL.	
	Examiner Adam Brandt	Art Unit 3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,10,11-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-15 is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☒ Claim(s) 10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>7/30/03, 4/15/03, 4/15/02</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I which is readable on claims 1 and 10-15 in the reply filed on 12/18/2006 is acknowledged. Claims 2-9 and 16-18 have been cancelled.

Information Disclosure Statement

2. This office acknowledges receipt of the following items from the applicant: Information Disclosure Statement (IDS) filed 4/15/2002, 4/15/2003, and 7/30/2003. The references cited on form PTO-1449 have been considered.

Specification

3. The disclosure is objected to because of the following informalities: Paragraph 0032 references figure 4 as a table of sample correction factors. It is believed the Applicant meant to reference figure 5 and not figure 4. Appropriate correction is required.

Claim Objections

4. Claims 1 and 10 are objected to because of the following informalities: The term "Gas ID" is vague and does not structurally describe the invention. Appropriate correction is required.
5. Claim 10 is objected to because of the following informalities: The second and third to last lines repeat that the inspiratory flow sensor is to be calibrated. It is believed the Applicant meant expiratory flow sensor. Appropriate correction is required.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Heinonen (US 5,918,596).

Heinonen discloses a gas delivery system comprising a gas ID, by which a gas supplied to the gas delivery system is identified (column 7, lines 33-42);

a blender (column 5, lines 23-27), blending oxygen (column 5, line 53) and the gas (column 4, lines 16-18) to provide a gas mixture with a preselected oxygen flow rate

an actuator (column 5, lines 15-17), driving the blender into various blending positions according to the oxygen flow rate of gas mixture, wherein the blending positions of the blender are corrected based on characteristics of the gas mixture (control unit, column 7, lines 12-28); and

at least one flow sensor (column 7, line 13), to measure a flow rate of the gas mixture, wherein the flow sensor is corrected based on the characteristics of the gas mixture.

Allowable Subject Matter

8. Claims 10-15 are allowed.

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Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Stone (4,964,404); Shaffer et al. (5,429,123); Cutler (5,460,039); Clough (5,503,145); Bathe et al. (5,558,083) (5,699,790) (6,089,229); Maffatone (5,678,542); Lampotang et al. (5,887,611); Head et al. (6,142,147); Drzewiecki (6,305,212); Krebs (6,962,154); John et al. (7,089,927); Cegielski et al. (5,159,924); Psaros (5,727,545); Lekholm (5,730,119); Cochran et al. (5,794,616); Weismann (5,848,591); Rosen et al. (6,085,743); Heinonen et al. (2002/0169385) all relate variable, multigas respiration systems.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adam Brandt whose telephone number is 571-272-7199. The examiner can normally be reached on 8:30 AM to 4:30 PM; Mon thru Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ACB
AB



Adam Brandt
Examiner
Art Unit 3771



JUSTINE R. YU
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

1/15/07